

1 THE HONORABLE RICARDO S. MARTINEZ
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SEDRICK DEWAYNE ALTHEIMER,

11 v. Plaintiff,

12 PIERCE COUNTY, WASHINGTON, and
13 PIERCE COUNTY SHERIFF EDWARD
14 TROYER, (a/k/a Ed Troyer), in his individual
and official capacity,

15 Defendants.

Case No. 2:21-cv-01437-RSM

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17 **PLAINTIFF'S REPLY IN
SUPPORT OF PLAINTIFF'S
AMENDED MOTION TO
COMPEL DEFENDANT PIERCE
COUNTY, WASHINGTON'S
DISCOVERY RESPONSES**

Note on Motion Calendar: 09/22/2023

18 I. **INTRODUCTION**

19 Plaintiff Sedrick Dewayne Altheimer ("Plaintiff") respectfully requests that this Court issue
20 an order compelling Defendant Pierce County, Washington to produce complete responses
21 requested in Plaintiff's First Set of Requests for Production of Documents Nos. 4, 8, 9, 11, and 15
22 ("Discovery Requests"), pursuant to Fed. R. Civ. P. 26, 33, 34, 37, and LCR 37. Plaintiff
23 propounded his discovery requests on May 9, 2023. As of September 20, 2023, Defendant Pierce
24 County has yet to fully respond claiming it has not had sufficient time to complete its ESI search.
25 Plaintiff also requests that the Court order Pierce County to produce the statutory basis for its
26 privilege log.

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II. PLAINTIFF'S REPLY

A. Requests for Production Nos. 4 and 8

Defendant Pierce County argues that “[t]here is nothing else to produce or compel” in response to Request for Production No. 4 (ECF No. 45 at 4) but continues to supplement its response with its last supplemental response dated and provided on September 14, 2023 (ECF No. 46-2 at 21-23).

REQUEST FOR PRODUCTION NO. 4: Produce any and all communications, including, but not limited to emails, text messages, memorandums, notes, sent to and from any Pierce County agent, elected official, or employee regarding Plaintiff Sedrick Dewayne Altheimer.

RESPONSE: Please see Pierce County Sheriff's Department Supplemental Reports and notes authored by Sgt. Michael Blair and Sgt. Jason Youngman on January 28, 2021 (bates nos. 01030001-6). Discovery is on-going. Defendant is conducting an ESI search of non-privileged materials that may be in the possession of the following Departments: The District Court, The Prosecuting Attorney's Office, The Risk Management Office, The County Council, The County Executive, The Sheriff's Office including Corrections, Facilities and Chris Gaddis (Superior Court Administrator). The search and processing of the result could not be completed before these responses are due. Defendant Pierce County will supplement these responses as required by the Federal Civil Rules.

SUPPLEMENTAL RESPONSE DATED SEPTEMBER 1, 2023: Without waiving previous objections, please see the supplemental documents responsive to Plaintiff's requests attached hereto pursuant to FRCP 33(d) bates nos. 01370001-218 and 01370238-4237 (redacted). Also see privilege log attached. Many of these documents are duplicative of materials already produced. Multiple County personnel receive and respond and forward ESI data, and each of these information transactions creates a digital copy, and Plaintiff's discovery requests as written do not authorize the County to cull duplicates. Discovery is on-going, Plaintiff's ESI data request remains voluminous, and the volume of data requested precludes the production of this request expeditiously. Therefore, Counsel will supplement these responses each Friday with the materials that have been culled by the Thursday before until supplementation is complete.

SUPPLEMENTAL RESPONSE DATED SEPTEMBER 8, 2023: Without waiving previous objections, please see the supplemental documents responsive to Plaintiff's requests attached hereto pursuant to FRCP 33(d) at bates nos. 01374238-9022 and 01380001-8822. Many of these documents are duplicative of materials already produced. Multiple County personnel receive and respond and forward ESI data, and each of these information transactions creates a digital copy, and Plaintiff's discovery requests as written do not authorize the County to cull duplicates. Discovery is on-going, Plaintiff's ESI data request remains voluminous, and the volume of data requested precludes the production of this request expeditiously. Therefore, Counsel will supplement these responses each Friday with the materials that have been culled by the Thursday before until supplementation is complete.

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1 **SUPPLEMENTAL RESPONSE DATED SEPTEMBER 14, 2023:** Without
2 waiving previous objections, please see the supplemental documents responsive to
3 Plaintiff's requests attached hereto pursuant to FRCP 33(d) at bates nos. 01370219-
4 237, 01379023-9027, and 01388823-15962 (redacted). See also attached privilege
5 log. See also Attachment A. Many of these documents are duplicative of materials
6 already produced. Multiple County personnel receive and respond and forward ESI
data, and each of these information transactions creates a digital copy, and Plaintiff's
discovery requests as written do not authorize the County to cull duplicates.
Discovery is on-going, Plaintiff's ESI data request remains voluminous, and the
volume of data requested precludes the production of this request expeditiously.
Therefore, Counsel will supplement these responses each Friday with the materials
that have been culled by the Thursday before until supplementation is complete.

7 It appears from Pierce County's supplemental response to Requests for Production Nos. 4
8 and 8 that those requests are still incomplete. Pierce County's blanket response "Discovery is on-
9 going, Plaintiff's ESI data request remains voluminous, and the volume of data requested precludes
10 the production of this request expeditiously. Therefore, Counsel will supplement these responses
11 each Friday with the materials that have been culled by the Thursday before until supplementation
12 is complete" does not comply with the Federal Rules of Civil Procedure. Pierce County identifies
13 the number of pages it has supplemented in its responses to Plaintiff's discovery requests to date,
14 but many of the documents produced are duplicates.

15 **B. Request for Production No. 9**

16 Pierce County argues that it did not supplement its response to Request for Production No.
17 9 because it informed Plaintiff in its letter dated July 25, 2023, that the "Pierce County Sheriff's
18 Department did not investigate the January 27, 2021, encounter between Plaintiff and Sheriff Troyer
19 and therefore there are no other responsive investigative materials to produce for RFP 9 (Dkt. 43-5,
20 pg. 2)." Pierce County appears to be confused with its answer to Interrogatory No. 9 and its response
21 to Request for Production No. 9. On page 2 of Pierce County's letter dated July 25, 2023, Request
22 for Production No. 9 is identified as one of the requests for production that is identified in Pierce
23 County's ESI search that remains incomplete. (ECF No. 43-5 at 3.)

24 **C. Request for Production No. 11**

25 **REQUEST FOR PRODUCTION NO. 11:** Produce any and all documents which
26 reflect, relate, and/or refer to any and all Pierce County Sheriff's Department's prior
contacts with Plaintiff Sedrick Dewayne Altheimer, including but not limited to any

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police department reports or CAD logs reflecting calls from any person for the time period January 1, 2015 to the present date.

RESPONSE: Discovery is on-going. Defendant is conducting an ESI search of non-privileged materials that may be in the possession of the following Departments: The District Court, The Prosecuting Attorney's Office, The Risk Management Office, The County Council, The County Executive, The Sheriff's Office including Corrections, Facilities and Chris Gaddis (Superior Court Administrator). The search and processing of the result could not be completed before these responses are due. Defendant Pierce County will supplement these responses as required by the Federal Civil Rules.

SUPPLEMENTAL RESPONSE DATED SEPTEMBER 8, 2023: The Pierce County Sheriff's Department nor any of its contract cities has any record of any prior contact with Plaintiff.

Pierce County claims in its supplemental response dated September 8, 2023, that “the Pierce County Sheriff’s Department nor any of its contract cities has any record of any prior contact with Plaintiff.” (ECF No. 46-2 at 28-29). Plaintiff has evidence to the contrary and requests that Pierce County supplement all responsive documents in its possession.

D. Request for Production No. 15

REQUEST FOR PRODUCTION NO. 15: Produce any and all any and all documents which refer or relate to any informal or formal complaints made against or about Defendant Sheriff Edward C. Troyer concerning the use of excessive force, aggressive conduct, and/or violent or improper tactics, including *Brady* violations, at any time during his employment with the Pierce County Sheriff's Department.

RESPONSE: Objection. This request is overbroad by seeking informal and/or formal complaints that were unsubstantiated. Without waiving these objections, Sheriff Troyer was added to the Brady list for the incident with Plaintiff on January 27, 2021. However, Sheriff Troyer was acquitted of the charges via jury verdict on December 14, 2022. Please see materials produced pursuant to FRCP 33(d) (bates nos. 01220001-64).

SUPPLEMENTAL RESPONSE DATED SEPTEMBER 14, 2023: Please see bates no. 01220065 produced pursuant to FRCP 33(d).

In addition to Pierce County’s original response to Request for Production No. 15, Pierce County produced one additional page containing meeting notes that appear to have been authored by Pierce County Prosecutor Jim Schacht. (ECF No. 46-2 at 32). Pierce County has produced no internal documents relating to the complaint of false reporting and maintains there is “nothing left to compel.” (ECF No. 45 at 6).

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III. CONCLUSION

Defendant Pierce County has failed to provide the Court with any credible factual or legal basis to deny Plaintiff's motion to compel. Rather, it argues that Plaintiff's requests necessitate an ESI search that is voluminous and that the County is unable to produce the requested documents in accordance with Federal Rules of Civil Procedure regarding discovery. Plaintiff must have the documents he seeks to prove his case. Plaintiff relies on Defendant's responsiveness in discovery. Defendant Pierce County's failure to provide the documents sought is extremely prejudicial. Plaintiff respectfully requests this Court order Defendant Pierce County, Washington to produce the discovery sought.

DATED this 20th day of September 2023.

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Attorneys for Plaintiff

I certify that this memorandum contains 1,470 words in compliance with Local Civil Rules.

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2023, the undersigned caused a true and correct copy of the foregoing document to be served in the manner indicated below upon the following individual(s):

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The foregoing statement is made under the penalty of perjury under the laws of the United States of America and the State of Washington and is true and correct.

DATED this 20th day of September 2023.

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